

# Penyertaan Personal Guarantor sebagai Termohon dalam Permohonan Penundaan Kewajiban Pembayaran Utang (Studi Kasus Putusan No. 92/Pdt.Sus PKPU/2023/PN.Niaga.Jkt.Pst) = Inclusion of a Personal Guarantor as The Respondent in The Application of Suspension of Payment (Analysis of Court Decision No. 92/Pdt.Sus-PKPU/2023/PN.Niaga.Jkt.Pst)

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## Abstrak

Personal Guarantor atau Penjamin Perorangan seringkali ikut terseret sebagai Termohon dalam proses PKPU dikarenakan kebanyakan diantaranya memiliki keterkaitan erat terhadap debitur utama. Berdasarkan Pasal 254 UU No. 37 Tahun 2004, PKPU tidak berlaku bagi penjamin. Kendati demikian, masih banyak permohonan yang dikabulkan oleh Majelis Hakim dengan pertimbangan karena Personal Guarantor tersebut telah melepas hak istimewa mereka. Melalui studi kasus Putusan Pengadilan Niaga Jakarta Pusat Nomor 92/Pdt.Sus-PKPU/2023, akan dilakukan analisis terhadap penyertaan Personal Guarantor dalam mekanisme Permohonan PKPU yang menitikberatkan pada pertimbangan Majelis Hakim mengenai dikabulkannya permohonan PKPU yang menyertakan Personal Guarantor tersebut. Pokok permasalahan yang akan dibahas di dalam tulisan ini adalah mengenai kedudukan Personal Guarantor apabila dikaitkan dengan UU No. 37 tentang Kepailitan dan PKPU serta memerhatikan ketentuan mengenai jaminan dalam Kitab Undang-Undang Hukum Perdata. Hasil penelitian ini adalah bahwa masih terdapat banyak Putusan Pengadilan Niaga yang berkontradiksi sehingga mengindikasikan ketidakpastian penerapan Pasal 254 UUK-PKPU. Selain itu, pertimbangan Majelis Hakim terkait pelepasan hak istimewa dapat mengarah pada kekeliruan penerapan asas kepailitan dalam prosedur PKPU.

.....In numerous cases, Personal Guarantors are often involved as counterclaimant in the applications of Suspension of Payment process due to their close ties with the main debtor. According to Article 254 of Bankruptcy and Suspension of Payment Law that applies in Indonesia, the Suspension of Payment does not apply to guarantors. However, many applications are still granted by the Judges on the grounds that these Personal Guarantors have relinquished their special rights given by the Civil Code. Through a case study of Court Decision No. 92/Pdt.Sus-PKPU/2023/PN.Niaga.Jkt.Pst., an analysis will be conducted on the involvement of Personal Guarantors in the Suspension of Payment application mechanism, with a focus on the considerations of the Judges regarding the approval of PKPU applications that include these Personal Guarantors. The main issue discussed in this paper pertains to the position of Personal Guarantors when associated with Bankruptcy and Suspension of Payment Law while also considering the provisions regarding guarantees in the Civil Code. The results of this research shows that there are still many contradictory in the Court Decisions, indicating uncertainty in the application of Article 254 of the Bankruptcy Law. Additionally, the considerations of the Judges regarding the waiver of special rights may lead to misapplication of bankruptcy principles in the Suspension of Payment procedure.